

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 29, 2011

In the Matter of R. L. KIVEL, Minor.

No. 304194
Huron Circuit Court
Family Division
LC No. 10-004133-NA

Before: MURPHY, C.J., and BECKERING and RONAYNE KRAUSE, JJ.

MEMORANDUM.

Respondent appeals as of right from the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(e) and (g)¹. We affirm.

¹ MCL 712A.19b(3) states in pertinent part:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(e) The child has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and the parent has substantially failed, without good cause, to comply with a court-structured plan described in section 5207 or 5209 of the estates and protected individuals code, 1998 PA 386, MCL 700.5207 and 700.5209, regarding the child to the extent that the noncompliance has resulted in a disruption of the parent-child relationship.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

We review for clear error a trial court's determination that one or more statutory grounds for termination has been established. MCR 3.977(K); *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). A trial court properly terminates a respondent's parental rights if it finds that at least one of the statutory grounds for termination has been established by clear and convincing evidence and that clear and convincing evidence also supports the conclusion that termination is in the child's best interests. MCL 712A.19b(5); see *In re Jenks*, 281 Mich App 514, 516; 760 NW2d 297 (2008).

Petitioner provided sufficient evidence that respondent failed to substantially comply with the court-structured guardianship plan without good cause and that this disrupted the parent-child relationship. MCL 712A.19b(3)(e). The lower court was in the best position to judge the guardian's credibility regarding respondent's participation in visits and respondent's threat that the guardian would not see the child again. See *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent's incarcerations for newly committed crimes did not constitute good cause for his failure to resolve criminal issues and visit regularly. See *In re Utrera*, 281 Mich App 1, 22-23; 761 NW2d 253 (2008) ("Because respondent's asserted cause for noncompliance with the transition plan . . . is the very condition that impairs her ability to care for the child, it cannot constitute a legally sufficient or substantial reason.").

Petitioner also sufficiently established that respondent failed to provide proper care and custody and that there was no reasonable expectation that he would within a reasonable time considering the child's age. MCL 712A.19b(3)(g). The parties did not address the applicability of *In re Mason*, 486 Mich 142, 160-162; 782 NW2d 747 (2010), in which the Supreme Court held that incarceration for less than two years was generally an insufficient reason for termination. Regardless, the present case is clearly distinguishable. Respondent was incarcerated several times in the past year for various crimes when he should have been establishing a relationship with his child after her mother's death. He faced criminal charges in two counties from a chain of events that occurred on the day of his first agency-supervised visit—the first time he saw his child in months. He was never the child's caregiver, and he opposed the guardianship that gave her stability.

Terminating respondent's rights was also in the child's best interests. MCL 712A.19b(5). The child was bonded to her grandparents, who had cared for her all her life, and was not bonded to a father she seldom saw. It is appropriate to compare home environments when determining best interests. *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009). Further, the child's need for permanence and stability was also relevant to the best-interest analysis. See *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991). Although she could remain in guardianship, her future placement would be uncertain, especially in light of respondent's opposition to the guardianship.

Affirmed.

/s/ William B. Murphy
/s/ Jane M. Beckering
/s/ Amy Ronayne Krause